



**I****STATEMENT OF THE CASE**

On March 12, 2008, a federal grand jury in the Southern District of California returned an Indictment charging Aureliano Castillo-Sanchez ("Defendant") with one count of attempted entry after deportation, in violation of 8 U.S.C. § 1326(a) and (b). On March 13, 2008, Defendant was arraigned on the Indictment and pled not guilty. The Court set a motion hearing and trial setting for April 18, 2008. As of April 7, 2008, Defendant has not filed motions. The United States hereby files the following motions for fingerprint exemplars, reciprocal discovery and leave to file further motions.

**II****STATEMENT OF FACTS****A. OFFENSE CONDUCT**

On February 12, 2008, at approximately 4:22 a.m., Defendant attempted to enter the United States from Mexico through the pedestrian lanes at the San Ysidro, California, Port of Entry. Defendant presented an Alien Registration Receipt Card (I-551), bearing the name "Alejandro Barboza-Rosas," as his entry to document to Customs and Border Protection Officer W. Reeves. Defendant told Officer Reeves that he was going to work in San Diego. Officer Reeves notices that Defendant did not resemble the photograph on the I-551 card and asked Defendant for another form of identification. Defendant presented a California driver's license and a social security card, both of which beared the name "Alejandro Barbosa." Officer Revees suspected that Defendant was not the owner of the I-551, California driver's license and social security, and therefore, referred Defendant to the secondary office for further inspection.

In the secondary office, Officer J. Roby asked Defendant to write his true name and date of birth on the back of the referral slip (Form I-443). On the back of the referral slip, Defendant wrote "Aureliano Castillo-Sanchez 11-5-59." Officer A. Odems analyzed Defendant's fingerprints using immigration databases and the results confirmed that Defendant is a citizen and national of Mexico who had been previously deported from the United States by an immigration judge. Officer S. Barron informed Defendant that he was under arrest.

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1           **B.     DEFENDANT’S POST-MIRANDA STATEMENTS**

2           On February 12, 2008, at approximately 7:14 a.m., Officers Barron and S. Guzman informed  
3 Defendant of his Miranda rights in the Spanish language. Defendant stated that he understood his  
4 Miranda rights and that he agreed to answer questions without the presence of an attorney. Defendant  
5 admitted that he is a citizen and national of Mexico and was born in Cualcoman, Michoacan. Defendant  
6 admitted he had been previously deported from the United States to Mexico. Defendant further admitted  
7 that the documents he presented to the Officers did not lawfully belong to him.

8           Defendant said that Carmen Ochoa, a person he knew in Colima, Michoacan, made arrangements  
9 for Defendant to meet with alien smugglers in Tijuana, Mexico. On February 10, 2008, Defendant took  
10 a flight from Colima to Tijuana. Defendant met a male at the Tijuana Airport who took him to a house  
11 in Tijuana where Defendant was given several documents for him to enter the United States. Defendant  
12 said that Carmen Ochoa advised him to attempt to enter the United States at about 5:30 a.m. because  
13 that is the time when many people enter the United States to go to work. On February 12, 2008,  
14 Defendant followed an unknown male into the pedestrian lanes and was planning on meeting that person  
15 at the McDonald’s restaurant after he crossed into the United States. Defendant agreed to pay \$3,500.00  
16 to use the entry documents and to be taken to Los Angeles, California, after he entered the United States.

17           **C.     DEFENDANT’S IMMIGRATION HISTORY**

18           Defendant is a citizen and national of Mexico. Defendant has been lawfully excluded, deported  
19 and removed from the United States to Mexico on approximately four prior occasions. Defendant was  
20 ordered excluded, deported, and removed from the United States to Mexico pursuant to an order issued  
21 by an immigration judge on three prior occasions: (1) August 14, 1992; (2) May 18, 1995; and  
22 (3) October 29, 1996. Defendant was most recently removed from the United States on January 17,  
23 2007. After the last time Defendant was lawfully ordered excluded, deported, and removed from the  
24 United States, there is no evidence in the reports and records maintained by the Department of  
25 Homeland Security that Defendant applied to the U.S. Attorney General or the Secretary of the  
26 Department of Homeland Security to lawfully return to the United States.

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**D. DEFENDANT'S CRIMINAL HISTORY**

Defendant has an extensive criminal history involving narcotics trafficking and immigration offenses. On December 20, 1989, Defendant was convicted of multiple counts of the sale of cocaine, a felony, in violation of California Penal Code § 11352, and received a sentence of 64 months in prison. On July 14, 1993, Defendant was convicted of possessing marijuana for sale and for transporting more than 28.5 grams of marijuana, felonies, in violation of California Penal Code §§ 11359 and 11360(a). On May 20, 1996, Defendant was found in violation of his parole with regard to his 1993 convictions and was sentenced to prison to finish his term of parole. On April 4, 2005, Defendant was convicted of being a deported alien found in the United States, a felony, in violation of 8 U.S.C. § 1326, and sentenced by a district judge in the Eastern District of California to 37 months in prison followed by 3 years of supervised release. [See Criminal Case No. 04CR0194.]

**III**

**UNITED STATES' MOTIONS**

**A. MOTION FOR FINGERPRINT EXEMPLARS**

The United States requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Identifying physical characteristics, including fingerprints, are not testimonial in nature and the collection and use of such evidence would not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969). See also Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal of blood is not testimonial).

**B. MOTION FOR RECIPROCAL DISCOVERY**

The United States hereby requests Defendant deliver all material to which the United States may be entitled under Fed. R. Crim. P. 16(b) and 26.2.

**1. Defendant's Disclosures Under Fed R. Crim. P. 16(b)**

The United States has voluntarily complied and will continue to comply with the requirements of Fed. R. Crim. P. 16(a). As of the date of this Motion, the United States has produced 69 pages of

1 discovery (including reports of the arresting officers and agents, a criminal history report, documents  
2 concerning Defendant's prior convictions and immigration history) and 1 DVD-ROM containing  
3 Defendant's videotaped, post-arrest statements. As of the date of this Motion, the United States has **not**  
4 received any reciprocal discovery from Defendant. Therefore, the United States invokes Fed. R. Crim.  
5 P. 16(b), requiring that reciprocal discovery be provided to the United States.

6 The United States hereby requests Defendant permit the United States to inspect, copy, and  
7 photograph any and all books, papers, documents, photographs, tangible objects, or make copies of  
8 portions thereof, which are within the possession, custody or control of Defendant and which Defendant  
9 intends to introduce as evidence in his case-in-chief at trial.

10 The United States further requests that it be permitted to inspect and copy or photograph any  
11 results or reports of physical or mental examinations and of scientific tests or experiments made in  
12 connection with this case, which are in the possession or control of Defendant, which he intends to  
13 introduce as evidence-in-chief at the trial, or which was prepared by a witness whom Defendant intends  
14 to call as a witness. Because the United States will comply with Defendant's request for delivery of  
15 reports of examinations, the United States is entitled to the items listed above under Fed. R. Crim. P.  
16 16(b)(1). The United States also requests that the Court make such order as it deems necessary under  
17 Fed. R. Crim. P. 16(d)(1) and (2) to ensure that the United States receives the discovery to which it  
18 is entitled.

19 **2. Witness Statements Under Fed. R. Crim. P. 26.2**

20 Fed. R. Crim. P. 26.2 requires the production of prior statements of all witnesses, except a  
21 statement made by Defendant. Fed. R. Crim. P. 26.2 requires reciprocal production of statements, in  
22 accordance with the Jencks Act.

23 The timeframe established by Fed. R. Crim. P. 26.2 requires the statement to be provided after  
24 the witness has testified. In order to expedite trial proceedings, the United States hereby requests  
25 Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before  
26 trial to be set by the Court. Such an order should include any form in which these statements are  
27 memorialized, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ) Criminal Case No. 08CR0717-BTM  
 )  
Plaintiff, )  
 )  
v. ) **CERTIFICATE OF SERVICE**  
 )  
AURELIANO CASTILLO-SANCHEZ, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IT IS HEREBY CERTIFIED that:

I, Joseph J.M. Orabona, am a citizen of the United States and am at least eighteen years of age.  
My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **The United States' Notice of Motions and Motions for Fingerprint Exemplars, Reciprocal Discovery and Leave to File Further Motions** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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Email: erick\_guzman@fd.org  
*Lead Attorney for Defendant*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 7, 2008.

/s/ Joseph J.M. Orabona  
JOSEPH J.M. ORABONA  
Assistant United States Attorney